S. HRG. 98-82

NOMINATION OF DAVID H. MARTIN

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

NOMINATION OF
DAVID H. MARTIN TO BE DIRECTOR OF THE OFFICE
OF GOVERNMENT ETHICS

MAY 12, 1983

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CONTENTS

Opening statements: Page

Senator Roth ---- 1

Senator Mathias ---- 10

WITNESS

THURSDAY, MAY 12, 1983

David H. Martin, nominee to be Director of the Office of Government Ethics ---- 7

Biographical information ---- 1

Responses to prehearing questions ---- 4

Responses to written questions submitted by Senator Cohen ---- 12

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letter to Senator Roth from Fred Wertheimer, president, Common Cause, June 1, 1983 ---- 15

NOMINATION OF DAVID H. MARTIN

THURSDAY, MAY 12, 1983

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 2 p.m., in room SD–342, Dirksen Senate Office Building, Hon. William V. Roth, Jr., chairman of the committee, presiding.

Present: Senators Roth, Mathias, and Levin.

OPENING STATEMENT OF SENATOR ROTH

Chairman ROTH. The committee will be in order.

This afternoon, we will hold a hearing to consider the nomination of David Martin to serve as the Director of the Office of Government Ethics.

The Office of Government Ethics was created under the Ethics in Government Act of 1978. The act charged the Office of Government Ethics with various responsibilities concerning conflicts of interest in the executive branch of the Government.

It is absolutely essential that public confidence in the ethical standards of Government officials is restored.

As Director of the Office of Government Ethics, you will have a critical role in ensuring that no public servant will have a conflict of interest with the duties of the position which he holds.

Mr. Martin, I would like to officially welcome you to the committee and thank you for your cooperation with both the members of the committee and the staff.

To aid in the evaluation of the credentials of the nominee to serve in this position, the committee has received information from the Office of Government Ethics and the FBI. The nominee has filed responses to a biographical and financial questionnaire and he has answered several prehearing questions.

Without objection, this information will be made a part of the committee hearing.

[The information referred to follows:]

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

Question 1. Name: (Include any former names used.)
Answer. David H. Martin.
Question 2. Address: List current residence address an mailing address.
Answer. 16121 Comus Road, Clarksburg, Maryland.
Question 3. Date and place of birth.
Answer. December 5, 1939, Bedford, Virginia.

Question 4. Marital status: Include maiden name of wife or husband's name.)
Answer. Married, Carol Dianne Briggs Martin.

Question 5. Names and ages of children.

Answer. Jennifer, age 13; Charles David, age 10.

Question 6. Education: List institution(s), dates attended, degree received, and date degree granted.

Answer. Western Maryland College, B.A., 1962; George Washington University Law School, L.L.B., 1967.

Question 7. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Answer. 1962–63: Recreation Director, D.C. Department of Recreation, 3149 16th Street, N.W., Washington, D.C.

1966–67: Legal Research, Office of the Legal Adviser, U.S. Department of State.

1967–68: Legislative Assistant, Congressman Harvey Machen, House of Representatives.

1968–74: Trial Attorney, Organized Crime and Racketeering Section, Criminal Division, U.S. Department of Justice, 10th and Pennsylvania Avenue, N.W., Washington, D.C.

1974—77: Legal Counsel, U.S. Secret Service, 1800 G Street, N.W., Washington, D.C.

1977: Partner, Santarelli, Sandground & Good, 1125 Connecticut Avenue, N.W., Washington, D.C.

1977–78: Glendenning & Schmid, 1750 Pennsylvania Avenue, N.W., Washington, D.C.

1978–present: Partner, Santarelli & Gimer, 2033 M Street, N.W., Washington, D.C.

Question 8. Government experience: List any experience in, or association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Answer. See answer to Question No. 7.

Question 9. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership or other business enterprise, educational, or other institution.

Answer. Partner, Santarelli & Gimer, 2033 M Street, N.W., Washington, D.C. 20036.

Partner, Jazz America Marketing, 1737 De Sales Street, N.W., Suite 300, Washington, D.C. 20036.

Question 10. Memberships: List all memberships and offices held in professional fraternal, scholarly, civic, charitable, and other organizations.

Answer. American Bar Association, Maryland Bar Association, D.C. Bar Association, National Rifle Association.

Question 11. Political affiliations and activities: List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Answer. Registered Republican for last 10 years, 1980 Executive Director, Montgomery County Maryland Reagan for President Committee.

Question 12. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

Answer. Omicron Delta Kappa, Mens Honorary Society; Outstanding Young Men of America, 1975.

Question 13. Publishing writings: List the titles, publishers and dates of books, articles, reports, or other published materials you have written.

Answer. None.

Question 14. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have written copies of and which are on topics relevant to the position for which you have been nominated.

Answer. None.

Question 15. Selection: (*a*) Do you know why you were chosen for this nomination by the President?

(*b*) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Answer. I believe I was chosen for this nomination because of my prior experience in two positions, both requiring keen skills of judgment and conduct. As Counsel to the United States Secret Service, I supervised a staff that performed full service counsel to a high visibility Federal agency. In that position, I represented the agency interests in several important civil cases; had overall responsibility for the agency legislative program; represented the agency with foreign courts and governments; routinely handled tort claims, procurement, personnel, criminal law and procedure, information access, and other diverse and sensitive matters which afforded a unique opportunity to provide counsel and advice to an action-oriented Federal agency. Also, my experience as a special trial attorney in the Organized Crime and Racketeering Section of the U.S. Department of Justice provided me with valuable Federal experience into matters requiring judgment and insight.

B. FINANCIAL DATA (RETAINED IN COMMITTEE FILES)

C. FUTURE EMPLOYMENT RELATIONSHIPS

Question 1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Answer. Yes.

Question 2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Answer. No.

Question 3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Answer. No.

Question 4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Answer. No.

Question 5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Answer. Yes.

D. POTENTIAL CONFLICTS OF INTERESTS

Question 1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Answer. See answer to Question No. B.8.

Question 2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer. I am not aware of any potential conflicts of interest regarding the position to which I have been nominated.

Question 3. Describe any business relationship, dealing or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Answer. None.

Question 4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Answer. None.

Question 5. Explain how you will resolve any optential conflict of interest, including any that may be disclosed by your responses to the above items.
(Please provide a copy of any trust or other agreements.)

Answer. N/A.

Question 6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the

Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Answer. Yes.

E. LEGAL MATTERS

Question 1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer. No.

Question 2. Have you ever been investigated, arrested, or charged or held by any federal, state, or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Answer. I was charged by the Prince Georges County Fire Marshall with failing to install smoke detectors at 3346 Huntley Square Drive, Temple Hills, Maryland, in May of 1982. These charges were dismissed in October 1982.

Question 3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Answer. No.

Question 4. Have you ever been convincted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

Answer. No.

Question 5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considerer in connection with your nominaton.

Answer. None.

AFFIDAVIT

APRIL 27, 1983.

I, David H. Martin, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

DAVID H. MARTIN.

Subscribed and sworn before me this 27th day of April 1983.

_____ _____,

Notary Public.

My Commission Expires November 30, 1983.

RESPONSES TO PREHEARING QUESTIONS

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

Question 1. Is there any issue currently under consideration by the Office of Government Ethics from which you may have to disqualify yourself? Is so, please explain.

Answer. I am unaware of any issue currently under consideration by the Office of Government Ethics from which I would have to disqualify myself.

Question 2. How were you selected to be nominated to serve as the Director of the Office of Government Ethics? Were any conditions expressed, or implied, attached to your nomination?

Answer. I was contacted by the White House Personnel Office in regard to serving in the Executive Branch. Through the interview process we mutually arrived at a decision that I could best serve the President in this position. No conditions whatsoever were attached to my nomination.

Question 3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as the Director of the Office of Government Ethics?

Answer. No.

Question 4. Why did you take this appointment to be the Director of the Office of Government Ethics?

Answer. Previous government experience has shown me that this position is quite important in terms of ensuring that the policies and decisions of the Executive Branch are based on what is best for the government as a whole. Decisions, openly and fairly arrived at, free of conflicts of interest, guarantee

that the best interests of the government are being served and that no private interests are benefiting to the detriment of the public good.

Question 5. Why do you feel that you are particularly well qualified to serve in this position?

Answer. As an attorney with both Federal Government and private practice experience, I have been called upon to exercise judgment in sensitive matters. This was especially true as a prosecutor in the Department of Justice and later as Chief Counsel to the United States Secret Service.

Question 6. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted Committee of the Congress?

Answer. Yes.

II. THE OFFICE OF GOVERNMENT ETHICS

Question 1. What is the mission of the Office of Government Ethics under the Ethics in Government Act?

Answer. The purpose of the Office of Government Ethics under the Ethics in Government Act is to oversee the Federal Executive Branch ethical standards program, and to prevent conflicts of interest on the part of officers and employees of all executive agencies.

Question 2. What are the Office of Government Ethics' most important functions?

Answer. The most important functions of the Office of Government Ethics are:

1. Upholding Executive Branch policies related to conflicts of interest;
2. monitoring the government's financial disclosure requirements, post-employment regulations, and agency education programs; and
3. issuing opinions and advice on various ethics standards and programs.

Question 3. What do you feel are the most important functions of the position to which you have been nominated?

Answer. In general, the most important function of the Director of the Office of Government Ethics is to maintain the overall direction of the Office in overseeing the Executive Branch policies related to preventing conflicts of interest on the parts of officers and employees of any executive agency.

Specifically, the Director of the Office of Government Ethics should:

1. Strive to provide information on, and to promote the understanding of, ethical standards in executive agencies;
2. monitor and investigate individual and agency compliance;
3. Develop and continually improve rules and regulations pertaining to the identification and resolution of conflicts of interest;
4. Establish a formal advisory opinion service.

Question 4. In its report on S. 461, a bill to reauthorize the Office of Government Ethics, the Governmental Affairs Committee expressed concern that some top-level Executive Branch officials may be unaware of ethical standards that govern them. What suggestions do you have for increasing the awareness of conflict-of-interest and ethical requirements among these officials.

Answer. Training and education regarding the ethical requirements and potential conflicts-of-interest imposed on Executive Branch officials under the Ethics in Government Act is, in my view, the best way to increase awareness of the ethical standards required by the Act. To achieve this, I would make agency ethics education one of my first priorities. Features of this plan would include: close contact and consulting with the various agency ethics counselors, formal training programs and seminars, and providing new and all other applicable ethics information in readily available and easy-to-understand brochures.

Question 5. Is there any responsibility of the Director of the Office of Government Ethics, as set forth in section 402 of the Ethics in Government Act of 1978, on which you would place special emphasis during your tenure as Director?

Answer. Since all of the responsibilities set forth in section 402 are directed towards the prevention of conflicts of interest, and bringing those subjects of the Act in compliance with the Act, they are all important. However, I would place special emphasis on No. 14, providing information on and promoting understanding of ethical standards in executive agencies. In order for this office to function effectively, it must ensure that the Ethics Officers in the various agencies have an awareness of and are performing their duties pursuant to the Act. Compliance is far easier if the standards are well known and generally understood.

Question 6. To date, the Office of Government Ethics has played a major role in the prevention of conflicts of interest. In your opinion, what role should the

Office of Government Ethics play in resolving conflict-of-interest problems in particular cases, such as cases of ethical misconduct by a high-ranking Executive Branch official?

Answer. In my opinion, the Office should resolve conflicts of interest in particular cases by informally cooperating with the particular agency involved to bring the official into compliance. In egregious cases a recommendation to the Department of Justice would be appropriate.

Question 7. When rumors or allegations of ethical misconduct by a top Executive Branch official surface in the press, do you believe that the Office of Government Ethics should issue public statements concerning its findings in such cases?

What level of public visibility do you think the Office of Government Ethics should maintain?

Answer. The Office of Government Ethics should maintain a low level of public visibility. Its function should not be to respond to rumors or allegations that surface in the press. In certain cases, it would be proper to issue a statement to the public regarding the findings of the Office, in order to ensure that if a conflict of interest existed appropriate atcion was taken.

Question 8. What suggestions do you have for improving the overall ethics program in the Executive Branch?

Answer. Again, helping further agency ethics education, I believe, is the key to improving the overall ethics program in the Executive Branch. An office that strives to provide information, answer questions, assist in compliance, and assess particular agency compliance should go a long way to improving the overall program.

Question 9. In carrying out the statutory responsibilities of the Office, what should the proper relationship of the OGE be vis-a-vis:

(a) The White House?
(b) the Department of Justice?
(c) other Executive Branch agencies?

Answer. The proper relationship of the Office of Government Ethics with all Federal agencies should be one of independence in terms of its decisionmaking functions. However, in carrying out its duties, it must cooperate with every Federal agency. I do not view the White House as being especially different in this regard. The Department of Justice, of course, must be consulted on particularly serious cases which may result in prosecution.

Question 10. Have you had any contact with the Office of Government Ethics or had any experience with ethical standards or enforcement during your tenure in government service or while you were in private practice?

Answer. As mentioned, I have had experience with ethical standards during my tenure in government service, particularly as Chief Counsel to the United States Secret Service.

Question 11. What are your views on requiring public financial disclosure by Executive Branch officials or employees? Do you believe that the present public financial disclosure laws are adequate? Are they too restrictive?

Answer. I believe that requiring public financial disclosure is necessary and proper. To that end, I think that the present public financial disclosure laws are adequate.

Question 12. Do you believe that ethical standards, conflict-of-interest laws, and financial disclosure laws that now exist discourage qualified persons from entering public service? Do you believe that these laws unduly inhibit recruiting efforts by an administration?

Answer. It is difficult for me to answer this question, having had no previous recruiting experience. While the conflict-of-interest and financial disclosure laws, and the ethical standards, might in some cases discourage qualified persons from entering public service, I do not believe that, standing alone, they would tend to do that. When dealing with a question of public service, there is a need to strike a delicate balance between an individual's right to privacy and the people's rights to know and have confidence in their officials. While the individual never fully loses his right to privacy, the rights and interests of the people most certainly should be determinative in questions regarding their officials.

Chairman ROTH. Mr. Martin, under our committee rules all witnesses at nomination hearings must be sworn in.

So, will you please stand and raise your right hand?

Do you solemnly swear that the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MARTIN. I do.

Chairman ROTH. Thank you.

As I already have indicated, members of this committee have asked some substantive prehearing questions. And, your responses have been placed in the record.

I will not repeat these questions, but at this time I would welcome any comments or remarks that you may care to make.

TESTIMONY OF DAVID H. MARTIN, NOMINEE TO BE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS

Mr. MARTIN. I did not prepare a statement, Senator Roth, but, however, it is a pleasure to appear here and I would be glad to supplement any questions which you may have regarding answers I have given in the prehearing questions.

I look forward to serving in the position which I have been nominated for and I am anxious to begin serving the President.

Chairman ROTH. It is a major responsibility that you will have. I think it is extraordinarily important that we ensure that the public does have confidence in our public officials.

Is there anything you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. MARTIN. There is not, Senator. I have studied the law and considered the matters that I have undertaken in private practice and I am unaware of anything that is in conflict of interest.

Chairman ROTH. It would be particularly embarrassing in your case if there was!

Mr. MARTIN. Thoroughly embarrassing.

Chairman ROTH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of Director of the Office of Government Ethics?

Mr. MARTIN. I do not.

Chairman ROTH. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress, if you are confirmed?

Mr. MARTIN. I do.

Chairman ROTH. Why do you feel that you are particularly well qualified to serve in this position?

Mr. MARTIN. It is a very important position requiring, I think, a judgment and it is a delicate position. I think that the positions that I have held in the Government previously being a trial attorney in the Organized Crime Section and handling major investigations and trials in which a certain amount of discretion was required and what and how you would undertake investigations in trials and, then, later as the Chief Legal Officer for the U.S. Secret Service, I was called upon to exercise judgment in a variety of matters which I think require ethical considerations regarding right and wrong as opposed to whether or not it was legal or strictly nonlegal.

Chairman ROTH. What are your views on requiring public financial disclosure by executive branch officials or employees?

Do you believe the present public financial disclosure laws are adequate or are they too restrictive?

Mr. MARTIN. I believe they are adequate, as I viewed them. I think that public disclosure is an important part of the law and I feel that they are adequate and that the public has a right to know about its officials who are making decisions that will be of national significance.

Chairman ROTH. Do you believe that ethical standards, conflict-of-interest laws, and financial disclosure laws that now exist discourage qualified persons from entering public service?

Mr. MARTIN. That is a difficult question for me to answer, having not been in the recruiting business or in the recruiting process.

I think that they are necessary and I believe that they tend to do that along with other factors about Government service which might intimidate or make someone consider it too much of a sacrifice to serve the Government.

In particular, I suppose I am talking about the financial disadvantages that some people might suffer in addition to the financial disclosure.

Chairman ROTH. What suggestions do you have for improving the overall ethics program in the executive branch?

Mr. MARTIN. I think that coordination with the various designated agency officials is quite important.

I would seek to improve that coordination so that the agencies themselves could administer the laws to the best of their ability.

I think the training in education, compliance is what we are after here in this office and to ensure that the decisions of the Government are carried out without any conflicts.

So I think education and training is probably as important as anything because it is much easier to comply and to bring yourself into compliance in the Agency if you know what is expected, what you are expected to comply with.

It seems to me that it is a two-step process. I have not examined the training and the education and seminars and what have you that may be carried on presently but I think it is a two-step process.

You would want to educate the designated agency officers and then ensure that whatever their education consists of that is transmitted to, ensure that that is transmitted to all the officials in each agency who are subject to the act.

Chairman ROTH. Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman.

Welcome, Mr. Martin.

Mr. MARTIN. Thank you.

Senator LEVIN. Recently, the committee has held hearings on the reauthorization of the Office of Government Ethics. There are a number of us who have expressed concern over the fact that the Director of the Office now serves at the pleasure of the President.

Our concern was that regardless of the actual effect of such a relationship on the decisions of the OG Director, and so far there does not seem to be any evidence that there has been any improper influence as a result of the fact that the Director serves at the pleasure of the President, that there is an appearance that exists that such a relation-

ship creates. Uncertainty and doubt are created in the eyes of the public since you are judging, in essence, the person who works for the person to whom you are responsible jobwise and by whom you can be fired at will without cause.

What is your opinion in terms of appearance, of the present situation and the fact that unless amended you are going to be serving at the pleasure of the President?

Mr. MARTIN. I do not have a problem with that, Senator Levin. My feeling is that while you may serve at the pleasure of the President a person who is going to be, let's say, subject to influence because of the position he is in and because of the political consequences of a loss of job, I think, is going to be swayed by that whether he has a 5-year term or serves at the pleasure of the President or can only be removed for cause.

I believe the office should be independent and I think that anyone you confirm for this position should be recognized that he is that type of person.

So I do not view it as a particularly sensitive problem. Appearance wise, it may be, but in terms of practicality, I think it is a delicate position, practical wise, you are dealing with and passing judgment on high-level people who are selected by the President to serve him.

So you are going to have to have negotiations and dealings with the White House and the President, and, yet, recognize that your office for appearance sake must be absolutely independent in terms of the judgments it makes.

Senator LEVIN. A bill has passed the Senate relative to this issue.

Do you support the bill that we passed?

Mr. MARTIN. I am giving you my view on it.

Senator LEVIN. Do you support the bill that we passed?

Mr. MARTIN. I do not think it is a particularly difficult issue. I would not oppose the bill. I think the 5-year term and the for-cause removal is not something that is absolutely essential for the function of the office.

So I would not oppose the bill personally and I speak only for myself.

Senator LEVIN. You do not oppose it or support it?

Mr. MARTIN. I do not oppose it and I do not support it.

Senator LEVIN. If you received a call from the White House relative to an investigation that you were conducting, and you were subsequently asked about that call in a congressional hearing, would you divulge the contents of the call?

Mr. MARTIN. You know, that is a very difficult question for me to answer without having some specific facts before me. I really cannot answer that. Probably my tendency would be yes, I would. But I cannot absolutely say that that would be the answer in all cases, depending on how sensitive it was and what it involved.

Senator LEVIN. Say it was very sensitive?

Mr. MARTIN. If it involves matters of national security——

Senator LEVIN. No. I am not talking about national security. I mean politically sensitive.

Mr. MARTIN. My tendency would be to answer any question regarding contacts at the executive branch with the caveat that without having the facts before me, I could not say absolutely.

Senator LEVIN. Do you view those contacts privileged in any way?

Mr. MARTIN. Perhaps, depending on the subject matter.

Senator LEVIN. Which ones would be?

Mr. MARTIN. National security——

Senator LEVIN. Outside of the national security?

Mr. MARTIN. Anything of, where I acted as the conscience of the Government or an agency where I was giving advice as a lawyer, I think, would be privileged. Yes, and also any matters which might involve a sensitive investigation that the Department of Justice was undertaking or any other investigative agency, I think I would view those things as matters that I would be reluctant to divulge, pending the outcome of that investigation.

Senator LEVIN. So you might invoke the lawyer-client privilege?

Mr. MARTIN. I might, depending on the content, yes, because I view this office as acting as a conscience of the Government in many instances and you might be called upon to act in a counsel advice, depending on the agency that has contacted you and what the content is.

I hope I am not being too vague. That is the best I can do.

Senator MATHIAS. Mr. Chairman, I wonder if the Senator from Michigan would yield since Mr. Martin is a resident of Clarksburg, Md.

Senator LEVIN. I yield twice. [Laughter.]

Senator MATHIAS. I appreciate your yielding long enough for me to greet him and ask unanimous consent that a short statement describing his background and Government service be included in the record.

Chairman ROTH. Without objection.

[The statement follows:]

OPENING STATEMENT OF SENATOR MATHIAS

Mr. Chairman, I am privileged to be here today to introduce Mr. David H. Martin, the President's nominee to head of the Office of Government Ethics.

Mr. Martin, a resident of Clarksburg, Maryland, is at present a partner in the law firm of Santarelli and Gimer of Washington, D.C. A graduate of Western Maryland College and George Washington University Law School, he brings to this important post extensive legal experience, in addition to a background of Federal service.

Of particular importance, Mr. Chairman, is the service Mr. Martin has given the government. He has served in two Federal posts which have clearly prepared him well for the tasks he is about to undertake. As the Legal Counsel to the Secret Service, and as a trial attorney in the Department of Justice Organized Crime and Racketeering Section, Mr. Martin saw effective oversight and enforcement in operation, and was in a position to experience first-hand the importance of maintaining individual and organizational integrity.

Mr. Chairman, the Office of Government Ethics was first established in 1978 to oversee, monitor, and enforce compliance by Federal agencies and officials with the financial disclosure and standards-of-conduct requirements of the Ethics in Government Act. A self-monitoring ethics system, with appropriate enforcement mechanisms, is essential to the integrity of our government. This committee recently considered legislation to reauthorize the Office of Government Ethics for an additional 5 years. Our commitment to the work that the Office has undertaken, and to preserving the integrity of the government and its officials is clear. I am pleased that the President has chosen a well-qualified Marylander to lead this effort.

Mr. MARTIN. Thank you, Senator.

Senator LEVIN. What about a call from a Member of the Congress? Would you consider that to be more or less privileged than a call from the White House, relative to investigations?

Mr. MARTIN. I did not hear the last part of your question.

Senator LEVIN. Let's say a Member of the Congress called you about an investigation that you were undertaking, and another Member of the Congress at a hearing asked you about that first phone call.

Mr. MARTIN. Unless I had given my word that there would be no discussion of it, I do not see any privilege or any reason why not unless it were again something very sensitive that would destroy a man's career or hurt him in his public life.

I just do not know. But, probably, I would be willing to talk.

Senator LEVIN. Do you have any close personal friends on the White House staff?

Mr. MARTIN. Close personal friends? Well, I have friends on the White House staff but I do not think any of them are people that I have either socialized with or had any contacts with other than professionally.

Senator LEVIN. You are not particularly close to any White House staff?

Mr. MARTIN. I am not.

Senator LEVIN. What about the statutory limit on outside earnings for certain high-level Federal employees?

Do you have any feelings about that statutory limit as to whether we should keep it or amend it in any way.

Mr. MARTIN. I think it is a good idea. I think we should keep it.

Senator LEVIN. There are a couple questions here that I would like to ask on behalf of Senator Cohen.

You stated that you think that public financial disclosure is necessary and proper. In its testimony before the Oversight Subcommittee concerning the reauthorization of the office, the administration stated that the need for public versus confidential disclosure statements should be considered by the Congress.

Am I correct here, asking again on behalf of Senator Cohen, in believing that you would oppose eliminating public financial disclosure or replacing it with only confidential reporting requirements?

Mr. MARTIN. The question meaning, do I oppose that?

Senator LEVIN. Yes.

Mr. MARTIN. No, I do not.

Senator LEVIN. You do not oppose eliminating public financial disclosure?

Mr. MARTIN. Let me make sure I am answering properly.

Senator LEVIN. Let me rephrase it.

Would you oppose the elimination of public financial disclosure?

Mr. MARTIN. I would oppose it? No.

Senator LEVIN. You, then, would support the elimination of public financial disclosure?

Mr. MARTIN. Would I support it? No. I thought I was answering—I am for public financial disclosure.

Let me put it positively.

Senator LEVIN. Therefore, you would oppose its elimination?

Mr. MARTIN. I would.

Senator LEVIN. Thank you.

That applies to all officials to whom it applies to now?

Mr. MARTIN. Under the present law, yes.

Senator LEVIN. The second question is as follows.

To date, we have been fortunate to have had independent and dedicated individuals heading the OGE, former Director J. Jackson Walter, Acting Director, David Scott.

If I had my own comment, I would agree with that sentiment of Senator Cohen. Both have acted diligently to further the ethical standards of the executive branch.

What would you do if the administration were advancing a policy on ethics which you felt to be wrong or inappropriate in a specific case?

Would you feel free to state your views to either the Congress or to the public?

Mr. MARTIN. I certainly would.

Senator LEVIN. Have you ever written anything or commented publicly in any way on your views on the ethics law?

Mr. MARTIN. I have not.

Senator LEVIN. Have you ever yourself been in a potential conflict-of-interest situation?

Mr. MARTIN. May I think a minute?

Let me see.

I am unaware if I have. I do not recall any.

Senator LEVIN. Are you familiar with some of the circumstances in which the OGE has suggested the utilization of either disinvestment or blind trusts?

Are you familiar with those?

Mr. MARTIN. Yes, I am vaguely familiar.

Senator LEVIN. Do you believe there are circumstances under which both disinvestment and blind trusts or one or the other is appropriate?

Mr. MARTIN. Yes.

Senator LEVIN. Thank you.

Thank you. Mr. Chairman.

Chairman ROTH. Thank you, Senator Levin.

It is my understanding that Senator Cohen has a number of additional questions which we would ask you to answer in writing and we will leave the record open for that purpose.

Mr. MARTIN. Yes. I would be glad to provide you with any written responses you may have.

[Responses to written questions submitted by Senator Cohen follows:]

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR COHEN

Question 1. In response to some pre-hearing questions, you responded that you do not view the White House as being especially different from any other Federal agency in terms of its relationship with the Office of Government Ethics. You have, however, been nominated by the President and, under present law, are removable at the pleasure of the President.

(A) Do you think that these facts make your relationship with the White House different or special?

Answer. The Office of Government Ethics' relationship with the White House will always be somewhat sensitive because the people upon whom the Office of Government Ethics will be making judgments will mostly be officials with White House asosciations. However, even when coordination with the White House may be necessary, I do not believe that because the Director of the Office of Government Ethics serves at the pleasure of the President this should affect the independent nature of the Director or his office. The consequences of an arbitrary removal of the Director of the Office of Government Ethics by the President could have political consequences far beyond any matter that the Office of Gov-

ernment Ethics might require the Executive Branch to undertake in order to bring one of its officials into compliance with the Ethics in Government Act.

(B) Do you think there is a public perception that the Director of the OGE is under the control of the President?

Answer. No.

(C) Do you believe that the Director of the OGE could be under any pressure—either direct or subtle—from the White House to rule a certain way in conflict-of-interest cases? If you felt such pressure, what would you do?

Answer. Yes. The OGE could be under pressure, either direct or subtle, to rule a particular way in a conflict-of-interest case. However, if such pressure were applied, I would advise the official applying the pressure that the Office of Government Ethics must make its own independent assessments of every factual situation. While the Office is available for advice and consultation, its independence must be firmly asserted.

Question 2. One of the reasons that I support a "good cause" removal standard for the Director of the OGE is that it would assure the public that the individual ruling on sensitive ethical issues involving officials close to the President is not beholden to the President for his job. Particularly in cases where the Director clears an official of wrongdoing, the public is more likely to accept the decision if the Director has independence. Do you support a "good cause" removal standard?

Answer. I do not believe that a "good cause" removal standard is necessary. However, I do not oppose such a standard. The Director may deal with delicate matters involving each government agency, including the White House, and must necessarily have independence because of the nature of the position. Therefore, in my view, any person who would allow himself to be affected by pressure from White House officials would do so whether or not his removal could be for "good cause." For this reason, I do not view the good cause removal standard as particularly essential. However, it might be helpful in terms of the public's perception of the office.

Question 3. In your written responses, you have stressed the need for more training and education of officials and Federal employees concerning ethical requirements. You have also stated, however, that the OGE should maintain a low level of public visibility. How would you reconcile these two policies?

Answer. In terms of training and education, the Office of Government Ethics should have a high visibility within the Federal Executive Branch. But, in terms of press conferences and public statements, the Office of Government Ethics should generally maintain a low level of public visibility. In certain cases, when the nature of an allegation requires that it be aired, and a decision made by the Office of Government Ethics either clearing an official of any conflict-of-interest or stating that there clearly is a conflict-of-interest, the Office's findings should be made public.

Question 4. If rumors or allegations of possible conflict-of-interest or ethical misconduct by executive branch officials have surfaced in the press, do you think that the OGE should issue public statements concerning its findings?

Answer. As I stated, while the OGE's function is not to necessarily publicly respond to rumors or allegations that surface in the press, it may be appropriate for the OGE to make a public statement of its findings after it has fully investigated and assessed a particular case.

How does the OGE do this yet maintain "low visibility"?

Answer. Low visibility in terms of public activity is a matter of taste. I do not think that the Director of the Office of Government Ethics should hold regular press conferences to issue statements of the Office's findings on matters that are not of public importance. However, where there is any question of an official's status, in terms of his compliance with the Ethics in Government Act, the OGE should issue a public statement.

Do you think that a finding by the Director of the OGE that an official has not engaged in misconduct helps clear the official in the public's mind?

Answer. Yes, a finding by the Director of the Office of Government Ethics that an official has not engaged in misconduct regarding conflicts of interest does help clear the official in the public's mind. However, such a finding might never undo the harm that public allegations of misconduct or conflict-of-interest may have caused.

Question 5. You have indicated that you would refer matters concerning criminal conflict-of-interest violations to the Department of Justice. What would you do if the Department decided not to prosecute a criminal violation, but you dis-

agreed with that decision? Would you publicly disagree with the Department? Would you take further action?

In addition to the criminal conflict-of-interest laws there are many ethical requirements governing executive branch officials. What emphasis will you place on ethical standards, such as those set forth in Executive Order 11222?

Answer. If I disagreed with a decision of the Department of Justice on a matter of prosecutorial discretion I would request a conference with the appropriate official in the Department to express my views. In matters of prosecutorial discretion reasonable men can disagree. However, if I felt particularly strong about a case and I thought that the Department was clearly wrong, I would strongly urge them to reconsider. Further action would not be justified unless it were a particularly egregious case and I felt a need to go beyond the Department of Justice, perhaps taking the case to a higher authority. In this rare instance, I would communicate my feelings to the President.

Executive Order 11222 is the cornerstone of the standards of conduct for all Federal employees. It goes beyond the criminal laws and is an excellent guideline for Federal employees in conducting their public affairs. In my view, it should share equal status and importance with the conflict-of-interest laws and the Ethics in Government Act. Therefore, I would give it equal treatment in terms of exposure, training and education.

Question 6. What would you do if you found that the designated agency ethics official of a particular agency was not acting independently?

Answer. If I determined that a designated agency ethics official was not acting independently in carrying out his duties I would, pursuant to the Ethics in Government Act, request the agency's head to replace the official with someone who would act independently and carry out his duties in conformance with the Act.

Question 7. In your new capacity, you will be reviewing the financial disclosure statements of top-level officials. If you advise an official to take action to bring him or her into compliance with conflict-of-interest requirements but the official refused to take such action, what steps would you take?

What if the official were a Cabinet member or other official who is higher than you in the administration?

Answer. If a particular official refused to take actions to bring himself into compliance, I would request an audience with that official to explain where he was not in compliance and why compliance was absolutely essential in his case. If the official still refused to bring himself into compliance, I would take the matter up with White House counsel and request that the President direct a member of his cabinet or office to bring the official into compliance. I would explain why such compliance was essential—equal treatment of all members of the Executive Branch is absolutely essential to ensure that public trust is being carried out. It would make no difference whether the official were a cabinet member or held a higher office than me.

Chairman ROTH. Thank you, very much Mr. Martin.

We appreciate your being here and wish you well in your endeavors.

The committee is in recess.

[Whereupon, at 2:34 p.m., the committee recessed, to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

COMMON CAUSE,
Washington, D.C., June 1, 1983.

DEAR SENATOR: The Governmental Affairs Committee will soon vote on the nomination of a new director for the Office of Government Ethics. Due to the unique sensitivity of the responsibilities of the Office of Government Ethics, Common Cause considers it especially important that any individual named to serve as its director meet the highest standards of objectivity and integrity.

The nomination of a new director comes after two years of the Reagan administration in which recurrent questions of conflicts of interest regarding a number of high officials have raised serious concerns about the administration's commitment to the need for vigorous adherence to the letter and spirit of the highest standards of ethics in government. Significant ethics questions have been raised about the Attorney General, Director of the CIA, appointees at the EPA, the Secretary of the Navy, and others. In addition, top level officials at the White House, including Counsel Fred Fielding and former Personnel Director Pendleton James, have been highly critical of the Ethics in Government Act and have advanced proposals that could emasculate the law. In this context it is particularly important that the Governmental Affairs Committee and the full Senate be assured that a nominee for Director of OGE be a person of unquestioned independence and integrity who is fully committed to the mission of OGE and who will actively and vigorously implement existing ethics laws and regulations.

Common Cause believes that in the five years since its passage, the Ethics in Government Act has worked well. The major provisions of the Act—public financial disclosure, revolving door provisions as well as the Office of Government Ethics—established new rules and procedures that have enhanced the integrity of the institutions of government.

We believe that the effectiveness of the Office of Government Ethics in implementing ethics enforcement has been in no small measure due to the commitment of the previous Directors to the mandate of the Office, to ethics laws and regulations and to the fundamental goal of a government where public office is not used for private gain. A new director should meet those high standards and commitment.

The Senate has passed legislation reauthorizing OGE that strengthens the office and gives it more independence in several significant areas. Although that legislation has not yet reached final enactment, Common Cause believes a new director should be committed to independence for the OGE. The Senate should expect a new director to be able to give free and candid advice and counsel regarding the office and the ethics laws to the appropriate committees of the Congress regardless of the positions taken by the White House. The nominee should assure the Senate that as director he will vigorously undertake enforcement actions free from political interference. The nominee should commit OGE to more aggressively elevating awareness and understanding of ethical standards in executive agencies.

Common Cause also believes the Congress has an important role to play in assuring the highest standards of integrity in government service. A full and complete confirmation process by the Senate is critical in assuring that a nominee for director is affirmatively qualified to carry out responsibly the duties of the office and to a maintenance of the strong leadership that has existed at OGE. Searching and periodic legislative oversight of the performance of the office and its director is essential for the accountability of both OGE and the Congress in upholding the necessary high standards of conduct needed for the government to maintain the public's trust.

Sincerely,

FRED WERTHEIMER, *President.*

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